

NOTIFICATION OF A CALL-IN UNDER THE PROTOCOL ON THE COUNCIL'S DECISION MAKING PROCESS

We the undersigned wish to apply the Call-In procedure in respect of the following decision

The Cabinet held on (date)

or the decision taken by the Cabinet Member for Resources

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Date :- 24th January 2019

Minute number /reference number and title of report:-

Ref: 14/18 – Beach Hut Reviews (Notice Published 14th December 2018).

Decision/Resolution:-

THAT Options 4 and 6 be adopted but with a pause or freeze at the end of the second year to review the effect of the changes (including whether differing locations are affected differently);

i. THAT the new ten-year leases be provided to the existing beach hut tenants when the current licence expires with the additional benefits as per paragraph 8 of the report.

ii. THAT the proposed rental increases in line with the methodology set out at paragraph 12 of the report be implemented over a phased five year period, commencing on 1 April 2019. The phased increase over this length of time would enable the increase to be paused, deferred or cancelled should market conditions change. Three months prior to the end of the second year of phasing, the market shall be reviewed and a formal freeze on increases shall take affect should conditions have changed.

As a result of representation that an additional option is added that:

An existing named licence holder may choose to continue with a three year renewable licence on the same terms and conditions as they have previously enjoyed. A renewed licence will be available from 1st April 2019 at those terms and uprated for inflation since the last increase as measured by the Consumer Price Inflation index. This option will be available solely to existing named licence holders. The licence holder may also choose at any point during the term of the licence to transfer to the lease arrangements as set out in the report, the length of the lease being for the unexpired period of 10 years commencing from 1st April 2019. Should the licence holder sell or otherwise transfer ownership of the hut, a lease of the land upon which it stands will be offered to the new owner under the arrangements as set out in the report, also for the unexpired period of ten years commencing from 1st April 2019 and with an option to renew.

In accordance with the Council's Constitution the following **cannot** be called in :-

- A recommendation by the Cabinet and Cabinet member to full Council for adoption or approval;
- If the item has already been the subject of an agenda item on the Scrutiny Committee arising from the forward plan and observations were made to Cabinet and it is demonstrated that these were taken into account when making the decision.
- if concerns were raised following the publication of the Cabinet agenda item, or at the meeting of the Cabinet, and were taken into account, or in relation to

a Cabinet member delegated decision, such concerns were raised in writing with the Cabinet Member during the notification period prior to the actual decision being taken, and were taken into account.

The brief statement supporting the reason for the call-in is as follows:-

The concerns raised in this Call-In were raised during the notification period and there is no evidence they were taken into account.

It needs to be acknowledged that the whole journey of the Beach Huts Review and delegated decision has been fraught and contentious. An overall reason for calling it in is to give proper and transparent scrutiny finally and that the concessions included in the final decision alongside all its content are discussed through proper governance. There is now a state of confusion by Beach Hut Owners on what the decision now actually means. The delegated decision being discussed at Scrutiny will enable clarity and bring some proper conclusion to this very contentious issue and confused process. It will hopefully enable transparent closure, clarification and resolution for beach hut owners. It will enable Beach Hut Owners to then decide themselves what action they wish to take. It will also provide the opportunity for Scrutiny Members to discuss the appropriate use of delegated decisions and help to make suggestions for improvements. It has to be acknowledged that the length and level of unresolved objection in this contentious delegated decision has put the use of delegated decisions into question.

Although, it is acknowledged the Cabinet Member for Resources has responded in part to Beach Hut Owners' objections to the 400% proposed increase in rents (from £21.04 to £162.03 per sq.metre), this Call-In is based on the overall inadequate consultation and the methodology used in attaining the proposed rentals and the absence of evidence behind the decision. The use of a delegated decision in proposing the increase of rents has proved contentious and not followed a normal process of any landlord and tenant proposed rental increase with direct negotiations.

The evidence that the Cabinet Member has listened to some of the objections to the delegated decision, should not hide the fact that many of the concerns raised by objectors and IW Councillors have not been responded to and taken into consideration. There is no acknowledgement and response that there is evidence that the methodology and process have flaws. It could be concluded that the Cabinet Member's willingness to concede concessions in offering a 3 year option at current rate, does hide the reality the pricing formula is unfair. Cllr Lilley argues below in detail and provides evidence of inadequate consultation, incorrect and lack of evidence to substantiate the proposed changes in conditions and pricing. It is a simply case of smoke and mirrors.

Inadequate consultation with stakeholders, partners or the public

The whole consultation and timing of the delegated decision has meant that many beach hut owners have not been consulted. Many are elderly and this fact has not been taken into consideration fully and an assumption made that everyone is able to access IW Council websites and pick up publication of decisions. IW Council has all the addresses of all owners and it appears it did not write to all the owners to fully consult with them. A number have emailed the Cabinet Member of Resources but have had no response including IW Councillors.

The Council's Constitution – Article 16 on decision-making – 4.6 states:

"Where a Cabinet Member is taking a delegated decision any question from a member in response to a proposed delegated decision must be responded to before the decision is confirmed provided that such question is received at least 48 hours before published date as to when it is intended to make the decision".

Cllr Lilley wrote to Cllr Hutchinson on the 19th, 20th and 24th received no reply which is in contravention of Article 16, 4.6. Cllr Lilley states: "As a Councillor with Beach Huts in my Ward, I put forwarded a range of questions and suggestions but failed to get a meaningful response". Cllr Lilley raised the example of New Forest District Council Beach Hit Owners process of negotiation with New Forest District Council as the nearest authority with some similarity but had no response. There is clear indication that the delegated decision is arbitrary and focused on purely maximizing Beach Hut income generation from currently £70,000 to over £200,000 plus.

Paragraph 12 of Report 11/18 presents a table of proposed price increases based on a rate of £162.03 per sq.m. This rate seems very high compared to commercial rates advertised on the Isle of Wight. Paragraph 5 of Report 11/18 states that "sites for beach huts are no different from any commercial site"; however Beach Hut Owners appear to be treated differently from Commercial tenants in that they have been given no opportunity to negotiate their leases and the proposed income and only informed of a decision through publication of the delegated decision. There has been no consultation with other key stakeholders such as Parish and Town Councils and Ward Councillors that have Beach Huts within their area.

Cllr Lilley wrote on the 24th December (Appendix 2)

"The funding formula (how you calculate the rental) is redesigned so that there are size bands with a lower and higher cut off points and there are differentiation between areas of huts on the Island. Huts in Puckpool simply cannot be compared with huts in Gunnard. Again New Forest District Council have a differentiation model. Again this brings in an element of fairness."

This **aspect of concern from Cllr Lilley and other Beach Hut Owners has not been acknowledged and responded** to. Although there is evidence through the concessions to existing lease holders in regard the offer of three years remaining on existing terms, there is no acknowledgement that increasing £21.04 per sq m. to £162.03 per sq.m is not based on a full valuation review and proper process. This puts the delegated decision and IW Council vulnerable to Beach Hut Owners taking legal advice to individually and collectively contest the increase through tribunal, judicial review and Local Government Ombudsman. It must be noted that the concessions to existing leaseholders (beach hut owners) does not take away the fact that the IW Council would have fixed a new rental rate of £162.03 per sq m. on the huts and then giving a concession. Beach Hut Owners would have to eventually agree to the new pricing. In relation to this pricing the IW Council has not undertaken an impact assessment and the possibility of a high risk of voids (empty and derelict huts which become unsaleable as the new rental puts the huts in a valued way above a fair market price.

Many of the Beach Hut Owners and Cllr Lilley raised the issue of the need for differentiation due to the different locations of huts on the Island (See Appendix 1):

Cllr Lilley wrote on 20th December 2018 and received no response from Cllr Hutchinson:

"One major suggestion I wish to propose which is followed by the New Forest DC is their two tier system of a local (permanent) resident rate and a second homer/live outside the Council area rate. This would be a clear way of acknowledging the lower incomes on the Island and help to encourage and keep always a percentage of local ownerships. Local owners visit the beach huts more, keep the surrounding area for n good order, and often repair other huts of off Island owners."

"The New Forest have different rates of huts in different locations as opposed to a universal area rate which I feel again is appropriate for the Island. NDC also has less variation rates on size with a lower and upper rate (anything over 14 square ft). Again this could be more beneficial than extremely prohibitive rates on the larger huts."

The issue raised of the need of differentiation of rates has not been responded to. Paragraph 7 - Colwell Bay huts also suffer from loss of cliff, in some cases 10 metres over the last ten years with some huts being less than 2 metres from the cliff edge, but this is not taken into account. The Treasurer of Seaview Beach Hut Owners Association raised the following:

"Paragraph 24 - Risk Management - It does not appear that any weight has been given to the very real possibility of unoccupied huts falling into disrepair resulting directly from these swingeing increases."

The concession to existing Beach Hut Owners for opting to remain at current rentals for 3 years does not get over the fact that any new owners will have to buy and lease huts at the new rates with a high risk within the current market climate of being unoccupied. There is no risk assessment in the report in regard to the rise in rents putting the beach huts at an unrealistic price within the current market. The price rise makes beach huts unattainable to Islanders and due to high ferry costs will be at a price that mainlanders are going to see as too expensive. IW Council has not put within its budget a figure of £200K of future income from the beach hut rent rise without proper risk assessment of achieving this within the current market. This provides evidence that the report is extremely flawed. There is no reference to discussions with the Section 151 officer in this regard.

Absence of evidence for decision

Justification for the review and the proposed price increase is that beach huts are part of the council's commercial estate and that the council has a statutory duty to charge fees in line with the open market value of the beach huts. The report states that *"the council considered prices elsewhere on the south coast and believes the phased change reflects the market price"*. However, there is no evidence for this at all and there is therefore no quantitative justification that the proposed charges do indeed reflect the fair market basis. An earlier version of the report states that *"the current rent was set using the recommendations of the 2010 Independent Valuer's report which was subject to an annual inflationary increase"*. Again, there is no evidence or justification that this independent valuation has become invalid after only eight years. Even if that were so, it would surely only be an argument for commissioning a new independent valuation rather than attempting to unilaterally impose a set of revised charges with no independent professional basis.

IW Beach Hut Owners have carried out their own extensive survey of annual beach hut licensing costs, not just on the south coast but across the whole country (copy attached – Attachment 2). For ease of comparison they considered only council-owned sites which offer long-term annual leases and they also excluded sites for larger chalets with permission for overnight sleeping. Beach hut owners are renting land and in a commercial system it is reasonable to assume that there will be a link to local land values. They have therefore also included Land Registry figures for average local property prices as an ad-hoc method of adjusting for local land costs to give a truer comparison.

You will find the full results of this survey attached, however they can be summarised as follows –

- Costs for beach huts in the area between Swanage and Christchurch are out of line with costs in the whole of the rest of the country, not just the Isle of Wight, even when adjusted
- Costs on the Isle of Wight are below the nationwide average, but are not significantly out of line and are by no means the lowest
- Overall, Paragraph 12 - comparisons with other sites on the South Coast also need to be differentiated with the services that other Councils provide. Many of these sites have utilities and council services provided. This patently does not apply on the Isle of Wight. This has been raised by a number of Beach Hut Owners and again not been responded to.
- When adjusted for local prices, costs on the Isle of Wight are actually close to the nationwide median

The Council has a duty to establish a fair market value for annual site rental and use a process of valuation that is transparent and is through fair comparison with other Authorities. The Government's Rating Manual, Section 6 Part 3, - Valuation of all Property Classes Section 95 – Beach Huts states that it is **advisable to have valuation by reference to comparable rents where available and provides a more reliable basis**. The methodology used by IW Council does not only fail to make clear comparisons, the survey undertaken by IW Beach Hut Owners and information supplied by New Forest District Council Beach Hut Owners Association appears to contradict and challenge the methodology and conclusion presented in the delegated decision paper. See Attachments.

Desired outcome:

1. The concession to freeze the terms of beach hut owners for beach hut owners is upheld. However, the overall, decision is rescinded and the IW Council starts the process of reviewing the rents in a more transparent manner with direct discussions with the lease holders. This is in acknowledgement that the methodology and review process to increase the rent of £21.04 to £162.03 square metre does have inconsistencies in process.
2. IW Council work with IW Beach Hut Owners to establish a Federation of IW Beach Hut Owners so that in future and changes in leases/licences are undertaken in a more organised and straight forward manner. For example: New Forest Beach Owners have an Association that deals directly with New Forest District Council. This would prevent poor communication with Beach Hut Owners in the future.

3. Establish a fair market value for annual site rental system and policy with beach hut owners through establishing a beach hut policy and using a process of valuation that is transparent and is through fair comparison with other Authorities. This should take in the difference with differences in property values between IOW and mainland. Seek guidance through the Local Government Association in this regard.
4. In future, contentious delegated decisions are referred to full Cabinet and with decisions going through Scrutiny process thus avoiding unnecessary Call-Ins. Portsmouth City Council have a delegated decision process that has a delegated decision meeting within the Scrutiny process that enables residents/objectors of the decision and Councillors to meet with the Cabinet Member which enables a more transparent and dialogue-based process.

Names of members with signatures (minimum of three required with two being members of the scrutiny committee together with the support of the chairman of the scrutiny committee)

- 1 (Lead Member for the call-in) Cllr Michael Lilley
- 2 Cllr Ian Stephens
- 3 Cllr Rodney Downer
- 4 Chairman of the scrutiny committee – Cllr Andrew Garratt

Dated: 31.01.2019

When all sections have been completed the notification must be passed onto the Monitoring Officer.